IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

MONDAY, THE 13TH AUGUST 2007 / 22ND SRAVANA 1929

OP.No. 15477 of 2003(P)

PETITIONER:

K.VELAYUDHAN, SON OF KUNJUKRISHNAN,
JANAKI NILAYAM KUNNAPUZHA, T.C. NO. 18/231,
ARAMADA, THENMALA, THIRUVANANTHAPURAM,
VILLAGE OFFICER AT MOOPPYNAD VILLAGE OFFICE IN
WAYANAD. (RETIRED)

BY ADV. SRI.K.B.PRADEEP

RESPONDENTS:
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1. **THE STATE OF KERALA, REPRESENTED BY**
   THE PRINCIPAL SECRETARY, LAND REVENUE DEPARTMENT,
   GOVERNMENT OF KERALA, KERALA, THIRUVANANTHAPURAM

2. **THE JOINT DIRECTOR, WELFARE DEPARTMENT,**
   GOVERNMENT OF KERALA, THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI.NOBLE MATHEW

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 13 / 08/2007 , HE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

tss

OP. 15477/2003

ORDER ON CMP. 25647/2003 IN OP. 15477/2003 – DISMISSED

ORDER ON IA. 1050/2003 IN OP.15477/2003 - CLOSED

13.08.2007 **SD/- V.GIRI, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE SHOW CAUSE NOTICE DT. 20.9.02 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER .

EXT.P2:- COPY OF THE REPLY DT. NIL, SERVED ON THE 1ST RESPONDENT ON 21.2.03 TO HIS EXT.P1 NOTICE.

EXT.P3:- COPY OF THE ORDER DT. 5.5.03 ISSUED BY THE IST RESPONDENT.

/TRUE COPY/

P.S. TO JUDGE

tss

V.GIRI, J.

O.P.NO.15477 OF 2003 P

Dated this, the 13th August, 2007.

JUDGMENT

The petitioner, who was working as a Village Officer, retired from service in the year 1992. While working as the Village Officer at Mooppynad Village in Wayanad District, he apparently issued destitution certificates to several inmates of an Orphanage called J.D.T.Islam Orphanage, Kozhikode. It seems that the affairs of the Orphanage were scrutinized by the Government and later, a detailed inquiry has been conducted by the Additional Secretary to Government, Land Revenue Department. It further seems that an inquiry regarding the irregularities in the conduct of the Orphanage was conducted. One of them seems to relate to the destitution certificates obtained by certain inmates of the Orphanage without the beneficiaries being eligible for the same. Further inquiry led to the alleged negligence on the part of the author of the certificates and this ultimately resulted in Ext.P1 notice of show cause dated 20.9.2002 requiring the petitioner to show cause against a proposal for reduction in the pension drawn by the petitioner in terms of Rule 39(b) of Part III Kerala Service Rules. It was proposed to deduct Rs.300/- per month from the pension of the

petitioner. The petitioner was, at that point of time, drawing Rs.2,385/-.

2. In Ext.P1 show cause notice, the principal allegations seem to be that the petitioner had issued destitution certificates to 20 students, who are inmates of the Orphanage, without adequate inquiry, inter alia, relating to the issue and without being satisfied of the monthly income of the family of such students. The allegation was that destitution certificates were issued fraudulently.

3. In Ext.P2 reply given by the petitioner, he contended that destitution certificates were issued after ascertaining the income of the family of such destitutes. (There seems to be an anomaly in the concept of issuance of the destitution certificates to students, who cannot be called Orphans in the strict term. But apparently, the destitution certificates are issued to children who are not properly looked after by their parents and therefore, they had to rely on the amenities available in the Orphanage.) Be that as it may, the petitioner pointed out that he went by the procedure outlined in G.O.(P)No.192/RD/85 dated 23.3.1985 dealing with the procedure to be adopted for issuance of an income certificate. According to the petitioner, where the parents or guardians are not possessed of a regular

monthly income, but can earn only daily wages, a separate procedure is outlined for assessing their income and thereafter to determine whether they are entitled to destitution certificates. The specific case of the petitioner seems to be that he went by the procedure outlined in the said Government Order and therefore, he did not commit any illegality or irregularity in the issuance of destitution certificates. It seems that the Government Secretary heard the petitioner on 28.3.2003. Obviously the materials that might have been available to the petitioner almost 12 years earlier might have been irretrievable and the petitioner could have only reiterated what he has made in his objections.

4. Ext.P3 order was passed under Rule 59(1)(b) of part III of the Kerala Service Rules reducing the pension payable to the petitioner by an amount of Rs.150/-. According to the Government, the petitioner seems to have issued destitution certificates without ascertaining the income of the family of the beneficiaries of such certificates. On this premise, the Government went to hold that the petitioner had issued fraudulent certificates.

5. A counter affidavit has been filed on behalf of the Government justifying Ext.P3 order pointing out that the reduction

in the pension was warranted because of the negligence on the part of the petitioner in issuing the destitution certificates.

6. I heard learned counsel for the petitioner and learned senior Government Pleader as well. The issue relates to reduction of pension in terms of Rule 59 (1)(b) of Part III of the Kerala Service Rules. The power of the Government to order reduction of pension when there is either fraud committed by the employee or there is negligence seems to be a matter beyond challenge. In fact, learned counsel for the petitioner also did not challenge the jurisdiction or the authority or competence of the Government to order reduction in pension. His contention was that the allegation in the show cause notice was that the petitioner has issued the destitution certificates fraudulently. The inference ultimately drawn in Ext.P3 order was that the petitioner had issued destitution certificates without a proper inquiry as regards the income of the family relating to the beneficiaries of such destitution certificates. According to the learned counsel, faced with the allegation of the issuance destitution certificates irregularly, the petitioner in Ext.P2 objections referred to the Government Order dated 23.3.1985 and the procedure outlined to justify his action. He contended that the order contemplates a different procedure or a slightly different yardstick in cases where

the income of the guardians is on a daily basis as distinguished from a monthly or regular income, as the case may be. Reliance is placed on Clause 7 which contemplates revocation of certificates. According to him, if income certificates had been issued irregularly, then the Government could have revoked all such certificates in appropriate cases or could have revoked such bogus certificates. Neither was done. He, therefore, contends that the inference ultimately drawn against Ext.P2 seems to be inconsistent with the main allegations in Ext.P1. The issue of fraudulent certificates does not seem to be affirmed in Ext.P3.

7. I am inclined to agree with the submission of the learned counsel for the petitioner. What is involved is reduction of pension of a person who retired as early as in 1982. Ext.P3 order is issued in 2000. A pensioner would be disabled, naturally as he would have very little to defend the allegation of negligence of duty on his part, especially, when it is made 10 years after his retirement. In such circumstances, an inquiry should be conducted giving an opportunity to the person concerned to meet the allegations precisely. The allegation in Ext.P1 is issuance of bogus certificates. That has not been found in Ext.P3. Of course, the Government could have already ordered reduction of pension

on the premise that the petitioner was negligent in issuing certificates.

8. Learned Government Pleader made a specific reference to the Government Decision in Ruling No.III of Rule 59 Part III of the K.S.R., which contemplates reduced pension, where there are instances of fraud or negligence committed by an employee. If, therefore, there are instances of negligence, the same can also be a basis for a reduction in the pension. According to the learned Government Pleader, obviously, what is alleged in Ext.P3 is not merely negligence but issuance of bogus certificates. This apparently is not seen in Ext.P3. In such circumstances, I am not inclined to uphold Ext.P3.

9. This is not sufficient. The Government is entitled to conduct an appropriate inquiry as to whether there is negligence on the part of the petitioner in issuing destitution certificates mentioned in Ext.P1 or even other certificates. In such circumstances, the Government must be given an opportunity to do so.

10. For all these reasons, I quash Ext.P3. But I make it clear that the Government is entitled to conduct a fresh inquiry in terms of Rule 59 Part III of K.S.R. for reduction of the pension payable/drawn by the petitioner. The Government is also entitled

to conduct an inquiry either on the allegations which are mentioned in Ext.P1 or any other allegations, due notice of which may be given to the petitioner. In other words, the Government may conduct an inquiry either in respect of a portion of Ext.P1 or any other notice, of which the petitioner may be given due notice. Such an inquiry must be completed within a period of 6 months from the date of receipt of a copy of this judgment. Fresh orders regarding reduction of pension, if any, should be passed within the said time frame, after due notice to the petitioner and after such inquiry, as is deemed necessary and proper. Till such time orders are passed, the interim order passed by the court in I.A.No.1050/03 shall continue to remain in force.

Writ petition is disposed of in the above terms.

Sd/-
(**V.GIRI)**
JUDGE

sk/-

//true copy//

V.GIRI, J.

O.P.NO.15477 OF 2003

JUDGMENT

13TH AUGUST, 2007.